

#### **415.0000 PERSON**

*See also Permits. Foreign governments as, see also Foreign Governments and Consuls. Incompetent persons, see also Hospitals, Institutions and Homes for the Care of Persons.*

**415.0020 Buying Club.** A buying club is to be formed with appropriate bylaws and officers. The club will purchase merchandise from wholesalers and resell to its members at a specified markup. Profits will be used in part to operate the club and to buy items for the club's use. Excess profits will be credited ratably to the members or held to provide scholarships. On these facts the club qualifies as a person which may be issued a seller's permit. 9/22/67.

415.0040 **Cooperative Marketing Assn.,** held to be a "person" under section 6005. 11/24/50.

**415.0060 Corporations.** Two corporations with the same officers and stock ownership, one engaged in selling building materials and the other engaged in business as a construction contractor derive financial benefits from transactions between themselves. Inasmuch as they have not agreed to conduct a single business enterprise jointly they have no community of interest nor do they share profits and losses from a single joint enterprise, they are separate "persons" and not a joint venture. Accordingly, transfers of building materials by one corporation to the other are taxable retail sales. 9/14/67.

**415.0080 Jointly Owned and Operated Gas Plants.** Jointly owned and operated gas plants, created by independent oil companies to process their natural gas at cost, but which are not corporations, partnerships, associations, etc., as those terms are legally defined, are nevertheless persons as defined in section 6005, i.e., "any other group or combination acting as a unit," and hence, separate entities for purposes of Sales and Use Tax Law. Although these plants were not operated for profit, "gain, benefit or advantage" accrued to the owners in the form of reduced operating costs and expenditures plus conservation of resources. Thus, as persons, all the plants' processing charges constituted taxable gross receipts from retail sales. 3/4/68.

**415.0085 Joint Venture.** A person owns a gasoline service station. He or she enters into an agreement with another person to operate the station. The owner purchases gasoline in his or her own name for delivery into the tanks of the station. The operator pays to the owner the cost of the gasoline plus \$100 per month or \$0.03 per gallon, whichever is greater.

The parties are regarded as having formed a joint venture, and they are individually liable for the debts of the joint venture. 1/20/75.

**415.0093 Joint Venture—Characteristics.** An artist and a printer "collaborated" to produce lithographs. The artist maintains that there was not a sale of the artwork to the printer, but rather the two were engaged in a joint venture.

A joint venture is a special combination of two or more persons without corporate or partnership designation, formed for the purpose of jointly seeking a profit in a specific venture, and for which purpose they combine their property, money effects, skill, and knowledge. There must be proof of a community of interest and a sharing of profits and losses, and each venturer must have a right in some measure to direct the conduct of others through a fiduciary relationship that must exist.

If these tests are met, the relationship will be considered a joint venture rather than one of seller and buyer. 2/17/72.

**415.0100 Joint Venture and Partnership with Common Members.** Four businesses formed a joint venture to bid and construct an underwater subway tube. After the contract was awarded to the joint venture, the same parties making up the joint venture formed a partnership having as its purpose the ownership of equipment to be chartered to other parties working on the same project. Based on law and facts, the partnership and the joint venture are separate and distinct persons for purposes of Sales Tax Law because they hold separate meetings, file separate returns for property and income taxes and have separate and distinct labor agreements. They are considered separate entities by the Internal Revenue Service and

for purposes of Workmens' Compensation insurance premiums. They maintain separate accounting records and books, and use different accounting methods. 10/27/69.

**415.0108 Liability for Use Tax on Purchases.** In order for use tax to apply to a purchase of tangible personal property for use in this state, the sale must be not subject to sales tax and the purchase must be from a retailer. In the progression of definitions in the sales and use tax law, a "retailer" must be a "seller," and a seller must in turn be a "person" as defined in section 6005. The only governmental units included in "person" are the U.S. Government, this state, and political subdivisions of this state. Not included are foreign governments and other states and their political subdivisions. As a result, purchases from foreign governments, other states and their political subdivisions including their college and university systems, are not subject to use tax. 8/23/94.

**415.0110 Limited Liability Companies.** At least eight states have authorized a business structure called limited liability companies. These organizations are neither partnerships nor corporations. This state has neither recognized nor regulated this ownership concept. However, such organizations are clearly "persons" under section 6005 and must hold permits if they engage in selling activities in California. In the absence of legislation or case law, there is no authority to impose the company's unpaid tax liability on the company's owners. The seller's permit should reflect the nature of the organization and the state law under which it is authorized. 10/18/93.

(Note: Statutory change re California limited liability companies.)

**415.0112 Maquilladora.** A maquilladora is a corporation organized under Mexican law that is owned by an American business. Typically, the American business will ship raw materials to the maquilladora which will process the raw materials and ship the final product back to the American business. As a separate corporation, the maquilladora is a person separate from the American owner. The sales and use tax applies to transactions between the two as it would between any other separate entities. 4/20/87; 9/22/93.

**415.0113 Massachusetts or Business Trusts.** The Massachusetts or Business Trust is neither a corporation nor a partnership. It is an organization using a common law trust for the purpose of conducting business. section 6005 of the Sales and Use Tax Law includes the definition of "person" . . . "trust, business trust" . . . "trustee." Applicants for permits using this business structure should be required to furnish a copy of the document setting up the trust and personal asset information should be obtained from each trustee and they should be advised that each will be liable for the full business liability. 9/22/93.

**415.0115 Purchases by Individual Partners for Benefit of the Partnership.** Two construction firms enter into a joint bid for construction work. Each will be responsible for different aspects of the work. Each is jointly and severally liable to the customer for all aspects of the work. The combination of two firms is considered a "person" for sales and use tax purposes. However, the individual joint venturers are not purchasing the property for resale to the joint venture under the joint venture agreement. Rather, the individual joint venturers purchase the property for their own use in complying with their joint venture agreement. 10/13/82.

**415.0120 State Agencies.** "Sales" between state agencies do not constitute "sales" within meaning of Sales Tax Law, as only one "person" is involved. 11/2/50.

**415.0123 States of the United States.** Neither sales nor use tax applies to sales by, or purchases from, sister states. Tax does apply to sales made by, or purchases made from, organizations whose members are states of the United States. Thus, tax applies, for example, to sales made by the Multistate Tax Commission.

Sales made by and purchases made from the State of California are taxable. 6/8/90.

**415.0126 Statutory Period—Unpermitted Division.** The definition of "person" in section 6005 includes a corporation, but does not include unincorporated divisions, which are nothing more than internal

sub-units not having a separate legal life. A corporation, having some divisions holding permits and filing returns, and one division which is neither, is considered to be a “person” that has filed a return for those periods, since each person is only required to file one timely return per period. The statute of limitations for the issuance of a deficiency determination for any liability of the unpermitted division is three years in the absence of conclusive evidence that the taxpayer’s failure to report the liability of this unit was due to fraud or intent to evade the law. The eight year limitation period applies only if a “person” fails to file a return. 1/29/69.

415.0140 **Student Body** held to be a person within meaning of section 6005. 5/11/51.

[415.0180](#) **University of Minnesota Press.** The University of Minnesota Press is an agency of the State of Minnesota and as such is not a “person” under section 6005. Accordingly, the University of Minnesota Press is not a “retailer engaged in business in this state,” under section 6203. 5/18/67.

[415.0300](#) **State Universities.** Sales by one state university to another are not “sales” for sales and use tax purposes. The universities are part of a single legal entity (Cal. Educ. Code sections 66,000 et. seq.) On the other hand, sales by state universities to private colleges or community colleges are taxable unless otherwise exempt. 7/9/85.